

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

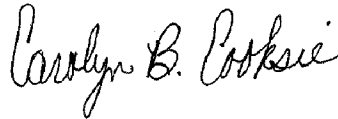
Notice FLP-261

2-FLP

For: State and County Offices

Offset for Guaranteed Loans

Approved by: Deputy Administrator, Farm Loan Programs



1 Overview

A

Background

The Debt Collection Improvement Act of 1996 (DCIA), effective April 26, 1996, was passed to maximize collections of Federal nontax debt by centralizing many debt collection operations. DCIA mandates Treasury Offset Program (TOP) referral for borrowers delinquent on a Federal debt. TOP enables Treasury to compare the names and taxpayer identification numbers (TIN's) of delinquent debtors with the names and TIN's of recipients of Federal payments. If there is a match, the Federal payment is offset to satisfy the overdue debt. Treasury will withhold payments due to delinquent debtors by administrative, salary, and tax refund offset.

31 U.S.C. 3701 defines "claim" in part to include funds owed on loans guaranteed by the Government. Guaranteed loan borrowers who signed FSA-1980-25 or FSA-1980-28 with the July 20, 2001, revision date are put on notice that FSA will attempt to collect Federal debt through TOP and other appropriate Government wide debt collection tools after, and to the extent, it pays the guaranteed lender's loss claim. FSA will offset all available payments according to 7 CFR Part 1951, subpart C, 7 CFR Part 3, subpart B, and 31 CFR Part 901.

B

Purpose

This notice:

- replaces Notice FLP-260 to add references to FSA-1980-28
- provides information about the FSA Farm Loan Program's (FLP's) plan to implement DCIA as to guaranteed loans

Continued on the next page

Disposal Date	Distribution
December 1, 2003	State Offices; State Offices relay to County Offices

Notice FLP-261

1 Overview (Continued)

B

Purpose (Continued)

- provides a list of questions and answers concerning the DCIA requirement
 - obsoletes Notice FLP-260.
-

C

Contact

State Offices shall refer questions about this notice to Trina Brake, LSPMD, at 202-690-4008.

2 Policy

A

Collecting Guaranteed Loss Payments From FSA FLP Borrowers

FSA revised FSA-1980-25 and FSA-1980-28 on July 20, 2001, to include the applicant's certification and acknowledgment that any amounts paid by FSA will constitute a Federal debt to FSA. Therefore, for final loss claims paid by FSA for a guaranteed loan borrower, who signed FSA-1980-25 or FSA-1980-28 with the July 20, 2001, revision date, FSA may use all remedies available to it, including offset under DCIA, to collect the debt from the borrower.

Notes: A Federal debt cannot be established on debts discharged in bankruptcy.

In a reorganization bankruptcy, a borrower will not be offset even when a final loss claim is paid provided the borrower successfully completes the confirmed plan on Chapter 12 and Chapter 13 cases. If the confirmed plan is not successfully completed, the loss will become a Federal debt when the final loss claim is paid. Consult the Regional Office of the General Counsel (OGC) in Chapter 11 cases to determine whether any discharge order prevents further action.

A Federal debt cannot be established on debt writedown loss claims approved by FSA.

Some borrowers have established corporations, partnerships, and other entities to avoid offsets and to circumvent other FSA regulations. Offset will be taken against the borrower's pro rata share of entity payments according to 7 CFR 1951.106, 792.7(1), and 1403.7(q), after notification of the intent to offset has been provided to the nonborrower entities according to RD Instruction 1951-C, section 1951.106 (e).

As DCIA is fully implemented, further details about TOP and internal administrative offset will be provided in a future 2-FLP amendment.

Notice FLP-261

3 Questions and Answers Concerning DCIA Requirements

A

Questions and Answers

The following table provides questions and answers concerning the DCIA requirement and implementation process after a final loss claim is paid on loans made using FSA-1980-25 or FSA-1980-28 with the July 20, 2001, revision date.

Question	Answer
1. When will the revised regulation be published and the 2-FLP amendment be issued?	The regulation was published as a final rule on July 1, 2002. The 2-FLP amendment will be released in the near future.
2. Who will hold the promissory note?	The lender will hold the promissory note. In addition, the lender remains responsible for future recovery on all guaranteed loans after a final loss claim is paid. The final rule in no way reduced the lender's responsibilities for making recovery. Any collections made by the lender will be paid to FSA in proportion to the percentage of guarantee according to FSA-1980-38 until the account is paid in full or otherwise satisfied.
3. When is the Federal debt established?	The Federal debt is established when the final loss claim is paid. Interest will be charged at the note rate the day the final loss claim is paid.
4. What is FSA collecting, the full amount of the loan, or the portion paid to the lender? Example: If FSA paid a \$90,000 loss claim (90 percent guarantee), does FSA collect \$90,000 or \$100,000?	All proceeds collected by FSA go to FSA, none to the lender. In this example, the \$90,000 becomes a Federal debt. FSA has the authority to collect Federal debt by offset. The lender's \$10,000 loss in the aforementioned example is not a Federal debt; therefore, no payments can be sent to the lender. However, any monies collected by FSA will reduce the amount the lender can collect under future recovery.

Continued on the next page

3 Questions and Answers Concerning DCIA Requirements (Continued)

A Questions and Answers (Continued)

Question	Answer
<p>5. What is meant by “the agency will use all remedies available to it, including those under DCIA, to recover on the Federal debt directly from the borrower”? What kind of payment is FSA collecting? What are the time lines?</p>	<p>FSA may use internal offset and referral to Treasury for TOP and cross-servicing to collect delinquent Federal debt.</p> <p>Internal Offsets - FSA offsets eligible Farm Program payments. The term “internal” is used by Treasury because FSA is doing the collecting, not Treasury. Offsets can be taken after the final loss claim is paid and appropriate 30-calendar-day due process notification has been provided if the debt remains unpaid.</p> <p>TOP - Treasury, under TOP, can collect from any Federal payments being made, such as:</p> <ul style="list-style-type: none"> • income tax refunds • Federal salary pay, including military pay • Federal retirement, including military retirement pay • contractor/vendor payments • certain Federal benefit payments issued under: <ul style="list-style-type: none"> • the Social Security Act, other than supplemental security income • part B of the Black Lung Benefit Act • any law administered by the Railroad Retirement Board, other than tier 2 benefit payments • other Federal payments that are not exempt from offset. <p>Offsets can be taken after the final loss claim is paid and the 60-calendar-day due process notification has been provided if the debt remains unpaid.</p> <p>Cross-Servicing - Guaranteed loans are exempt from cross-servicing.</p>

3 Questions and Answers Concerning DCIA Requirements (Continued)

A Questions and Answers (Continued)

Question	Answer
6. How are requests by lenders for release of liability and debt settlement handled?	<p>Requests for release of liability will be handled as follows:</p> <ul style="list-style-type: none"> • if the revision date of the signed FSA-1980-25 or FSA-1980-28 is before July 20, 2001, follow 2-FLP • if the revision date of the signed FSA-1980-25 or FSA-1980-28 is July 20, 2001, release of liability requests will be denied. <p>Details on debt settlement of a final loss claim will be provided in a future 2-FLP amendment.</p>
7. A borrower has 4 guaranteed loans and applies for a fifth loan using FSA-1980-25 with the July 20, 2001, revision date. Which final loss claims are subject to offset?	Only the fifth loan for which the borrower signed FSA-1980-25 or FSA-1980-28 with the July 20, 2001, revision date would be subject to collection by offset.
8. If a borrower repays the Federal debt (all of the final loss claim plus interest), will they then be eligible again for Federal loans?	Yes, once all the borrower's Federal debt is repaid, the borrower would be eligible for Federal loans, provided there was no previous "debt forgiveness" according to FSA regulations.
9. Will voluntary payments made by the borrower after a final loss claim is paid restart the statute of limitations?	Consult the Regional OGC to determine whether voluntary payments made by the borrower after the final loss claim is paid and the account referred to TOP would restart the statute of limitations for collection.
10. FSA can pay a loss to the lender that is greater than what has accrued on the borrower's note and greater than the liabilities of the guaranteed loan borrower. Will this have any impact on how much of the loss can be pursued under offset procedures?	Under the provisions of the guaranteed application, FSA has grounds for seeking full reimbursement from the borrower for the loss payment, regardless of any amount paid by the Government to the lender for costs associated with the loan.
11. How will FSA notify lenders of collections?	This issue has not been resolved at this time. Details on the notification procedures will be provided in a future 2-FLP amendment.